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Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Office of the Administrator

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MEMORANDUM

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TO: State Agency Directors
Juvenile Justice Specialists
State Advisory Group Chairs

FROM: J. Robert Flores *JRF*
Administrator, OJJDP

SUBJECT: Compliance Monitoring Guidance

As many of you are aware, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) staff and state juvenile justice specialists convened to discuss compliance monitoring issues at the 2007 OJJDP National Training held in Denver, Colorado, in October 2007. At the Juvenile Justice Specialist Business Meeting, OJJDP was provided a document that raised concerns with six specific issues: 1) the definition of an adult lockup; 2) the expansion of the monitoring universe; 3) the expansion of inspection requirements; 4) the definition of an adult inmate; 5) subjectivity of an "adequate monitoring system"; and 6) guidance and approval for use of the rural exception. This meeting also resulted in the creation of a compliance monitoring working group of juvenile justice specialists who agreed to work with OJJDP staff to address these issues, which were a concern to a number of states. Subsequent discussions between the working group and OJJDP staff resulted in the group providing OJJDP with a more detailed document expanding on their concerns, and proposing resolutions. Based on a careful review of these communications and analysis of law and regulation, this letter is a response addressing the concerns raised. In addition to providing statutory background, it proposes to clarify OJJDP's interpretation of the Juvenile Justice and Delinquency Prevention Act (JJDP Act) in the OJJDP Compliance Monitoring Guidance Manual and future regulations.

Definition of an Adult Lockup

With limited exceptions, JJDP Act § 223(a)(13) (the "Jail Removal Requirement") requires State plans to "provide that no juveniles will be detained or confined in any jail or lockup for adults." The term "jail or lockups for adults," in turn, is defined in Section 103 of the JJDP Act as—

(22) ...a locked facility that is used by a State, unit of local government, or any law enforcement authority to detain or confine adults—

- (A) pending the filing of a charge for violating a criminal law;
- (B) awaiting trial on a criminal charge; or
- (C) convicted of violating a criminal law.

The foregoing statutory language indicates that the Jail Removal Requirement contemplates facilities that are—(1) capable of being used to lock individuals in, physically; (2) used by a law enforcement authority (State, local, tribal, etc.); and (3) used (i.e., by way of formal designation or past use) for the purpose of detaining or confining adults held on criminal law violations (pending filing of charges, awaiting trial, or upon conviction). For example, a mental-health facility used for civil commitments would not fall within the class of facilities contemplated by the jail removal requirement, because adults are not typically detained in such facilities pending the filing of criminal charges, while awaiting trial, or upon criminal conviction; nor, in principle, would a group home for juveniles, or a facility used to detain only juveniles fall within this Jail Removal Requirement.

A “facility” is defined as “something that is built, installed, or established to serve a particular purpose.” *Merriam-Webster’s Collegiate Dictionary* (10th ed., 1993) Therefore, “jail or lock-up” may be understood as a reference to places having construction features for locking and unlocking individuals in, as well as to places actually used for the purpose of detaining or confining adults charged with criminal violations. Under such an understanding, the term encompasses a typical jail cell, as well as locations that have construction features capable of being locked and unlocked and intended to accomplish physical detention, such as law enforcement locations equipped with cuffing benches or cuffing rails.

In addition to jails, detention facilities, and correctional facilities, JJDPa § 223(a)(14), also mandates that States have an adequate system of monitoring “non-secure” facilities. As the Deinstitutionalization of Status Offenders (DSO), Separation, and the Jail Removal Requirements do not expressly reference “non-secure” facilities, an appropriate interpretation of this provision is that States should be expected to monitor “non-secure” facilities to ensure that the use of such facilities has not changed in a way that might make one or more of the core requirements applicable (e.g., a cuffing rail newly installed in a police station). Additionally, the term “non-secure facilities” reasonably may be understood in context to refer also to residential facilities not otherwise covered; this understanding informs 28 C.F.R. § 31.303(f).¹

¹ This regulation addresses the monitoring of jails, detention facilities, correctional facilities, and non-secure facilities. As stated in 28 C.F.R. § 31.303(f)(1)(i)(A) and (B), the identification of the monitoring universe “refers to the identification of all residential facilities which might hold juveniles pursuant to public authority and thus must be classified to determine if it should be included in the monitoring effort. This includes those facilities owned or operated by public and private agencies.” In addition, “[classification of the monitoring universe] is the classification of all facilities to determine which ones should be considered as a secure detention or correctional facility, adult correctional institution, jail, lockup, or other type of secure or nonsecure facility. 28 C.F.R. § 31.303(f)(1)(C) also provides that “[i]nspection of facilities is necessary to ensure an accurate assessment of each facility’s classification and record keeping. The inspection must include: (1) A review of the physical accommodations to determine whether it is a secure or non-secure facility or whether adequate sight and sound separation between juvenile and adult offenders exists and (2) A review of the record keeping system to determine whether sufficient data are maintained to determine compliance with section 223(a)(12), (13) and/or (14).

State Monitoring System

To clarify concerns raised with respect to the subjectivity of an “adequate monitoring system,” and the expansion of the monitoring universe and inspection requirements; it is important to review the language contained within JJDP § 223(a)(14) (which refers to jails, detention facilities, correctional facilities and non-secure facilities) and its implementing regulation, 28 C.F.R. § 31.303(f), which adds only residential facilities to the monitoring universe:

Section 223(a) of the JJDP provides that –

[i]n order to receive formula grants under [Part B of the JJDP], a State shall submit a plan for carrying out its purposes [and] such plan shall:

* * * * *

(14) provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to insure that the requirements of paragraphs (11), (12), and (13) [“core requirements”] are met...

To facilitate the States’ understanding of what constitutes an adequate State system of monitoring, it is incumbent on OJJDP to identify those kinds of facilities where the related core requirements are applicable.²

With a few limited exceptions, JJDP § 223(a)(11)(the “DSO Requirement,” which relates to deinstitutionalization of status offenders) requires that juveniles “who are charged with or who have committed an offense that would not be criminal if committed by an adult [“status offenders”]...shall not be placed in secure detention or secure correctional facilities....” The definitions provided in the JJDP § 103, in turn, identify the characteristics of the facilities subject to the DSO Requirement. The term “secure detention facility” is defined as--

(12) ...any public or private residential facility which –

² These three core requirements require that States, in order to receive formula grants, prepare plans that--

(11) shall in accordance with rules issued by the Administrator, provide that--

(A) juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, shall not be placed in secure detention facilities or secure correctional facilities; and

(B) juveniles--

(i) who are not charged with any offense; and

(ii) who are--

(I) aliens; or

(II) alleged to be dependent, neglected, or abused;

shall not be placed in secure detention facilities or secure correctional facilities;

(12) provide that--

(A) juveniles alleged to be or found to be delinquent or juveniles within the purview of paragraph (11) will not be detained or confined in any institution in which they have contact with adult inmates....; and

(13) provide that no juvenile will be detained or confined in any jail or lockup for adults [with limited exceptions]. ...

(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals in lawful custody in such facility; and

(B) is used for the temporary placement of any juvenile who is accused of having committed an offense or of any other individual accused of having committed a criminal offense.

The definition of the term “secure correctional facility” largely tracks that of “secure detention facility,” differing only in that the latter relates to facilities used “for the placement, after adjudication and disposition, of any juvenile who has been adjudicated as having committed an offense or any other individual convicted of a criminal offense,” JJDPa § 103(13). Thus, States must monitor public and private residential facilities that have construction features for physically restricting offenders held in lawful custody; this would include traditional juvenile correctional and detention facilities, adult jails, and lockups, and prisons. The purpose of monitoring such facilities is to determine whether status offenders, aliens, or children alleged to be dependent, neglected, or abused, are confined in secure residential facilities in violation of the JJDPa Section 223 (a)(11)(A) & (B).

Inspection Requirements

OJJDP has provided consistent guidance on the rate of on-site facility inspections and what it deems to be the characteristics of an “adequate system of monitoring,” in this regard, under Section 223(a)(14) of the JJDPa. Facilities where core requirement violations are likely to occur, must be monitored, on-site, by the designated state agency. Such on-site monitoring “must take place at a minimum of 10% of the facilities in each classification category, ...” [See OJJDP M 7140.7A, “OJJDP Guideline Manual, Audit of Compliance Monitoring Systems,” August 21, 2000]. In addition, States should strive to inspect all secure facilities once every three years.

Definition of an Adult Inmate

Under the JJDPa § 223(a)(12)(the “Separation Requirement”), State plans shall “provide that juveniles alleged to be or found to be delinquent or juveniles within the purview of paragraph (11) shall not be detained or confined in any institution in which they have contact with adult inmates.” Within the context of this provision, the term “institution” must be understood as a reference to facilities where one reasonably may expect to find “adult inmates,” itself a defined statutory term, at JJDPa § 103:

(26) the term “adult inmate” means an individual who—

(A) has reached the age of full criminal responsibility under applicable State law; and

(B) has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal offense.

Both juveniles and adult inmates may be found in prisons (e.g., where ‘scared straight’ type programs might be implemented), court holding facilities, juvenile detention facilities (e.g., where adult inmate trustees might be performing work on the grounds, or within the facility), juvenile correctional facilities (e.g., where transferred, certified or waived juveniles have been placed, and have reached the age of criminal responsibility), and adult jails and lockups. Thus the monitoring universe, for purposes of requiring an adequate system of monitoring with respect to the separation requirement, would include such institutions or facilities.

Removal Exception (for Rural Areas)

Section 223(a)(13)(B) (Removal Exception) of the JJDP Act articulates the specific circumstances where State reliance on the Removal Exception to the Jail Removal Requirement of the JJDP Act is appropriate. This statutory provision excepts:

- (B) juveniles who are accused of nonstatus offenses, who are awaiting an initial court appearance that will occur within 48 hours after being taken into custody (excluding Saturdays, Sundays, and legal holidays), and who are detained in a jail or lockup –

- (ii) that –

- (I) is located outside a metropolitan statistical area (as defined by the Office of Management and Budget) and has no existing acceptable alternative placement available;

- (II) is located where conditions of distance to be traveled or the lack of highway, road or transportation do not allow for court appearances within 48 hours...; or

- (III) is located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel;

OJJDP has implemented a consistent approach for implementing the Removal Exception to the Jail Removal Requirement. States wishing to utilize the Removal Exception, for any facility with the State, must obtain prior approval from OJJDP. See 28 C.F.R. 31.303(f)(4)(v). OJJDP reviews such requests to insure that the States have adequately addressed the statutory exception requirements, cited above, and to insure that exceptions are issued in a consistent manner.

OJJDP has never issued a blanket approval for a State to utilize the Removal Exception, at its discretion, and does not believe that such an approach would be in keeping with the spirit of the Jail Removal Requirement or the intent of those legislators who drafted the Removal Exception. Finally, States that wish to continue to use the Removal Exception must provide OJJDP with an

annual certification, verifying that all conditions continue to be present and all requirements continue to be met.

Summary

In sum, based on the current statutory requirements of the JJDP Act, and accompanying Federal Regulation, State's are expected to annually inspect a minimum of 10 percent of all secure adult jails and lockups; court holding facilities; and juvenile detention and correctional facilities. OJJDP also encourages States to spot check, on an annual basis, those law enforcement facilities that have annual written certification that they are nonsecure. Such on-site monitoring is necessary to ensure that the nonsecure nature of such facilities has not changed, through the possible installment of secure custody features.

I would like to take this opportunity to particularly thank those individuals on the compliance monitoring working group, for sharing your thoughts and concerns on these important issues. I know that all of you are committed, as am I, to serving the needs of children, youth and families, particularly those most at-risk of becoming involved in the juvenile justice system. I appreciate your dedication to this effort, and look forward to working with all of you in the New Year.

In closing, I would also like to share with you some changes which have recently been implemented within OJJDP. As of January 14, 2008, programmatic functions for compliance monitoring will be handled by the State Relations and Assistance Division (SRAD). Policy issues pertaining to compliance monitoring will remain in the OJJDP Policy Office. Should you have any specific questions with respect to compliance monitoring, please contact your SRAD State Representative.